IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

HARRY L. SAMUEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 01-722-SLR
	)	
ROBERT SNYDER, P. WILLIAM, R. SPISAK, and LT. REYNOLDS,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Plaintiff Harry Samuel, SBI #201360, a pro se litigant, is presently incarcerated at the Delaware Correctional Center ("DCC") located in Smyrna, Delaware. Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two step process. First, the court must determine whether the plaintiff is eligible for pauper status. On November 5, 2001, the court granted plaintiff leave to proceed in forma pauperis and ordered him to pay, within thirty days, an initial partial filing fee of $32.03. Plaintiff filed a letter motion for reconsideration on November 9, 2001. On November 19, 2001, the court denied plaintiff's motion for reconsideration and

ordered him to pay, within thirty days, the initial partial filing fee. Plaintiff paid the initial partial filing fee on January 2, 2002.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).[1] If the court finds the plaintiff's complaint falls under any one of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the Fed. R. Civ. P. 12(b)(6) standard of review. See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the factual allegations in the

[1] These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner in forma pauperis complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A(b)(1).

complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).[2] As discussed below, plaintiff's claims have no arguable basis in law or fact. Therefore, his complaint shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. The Complaint

Plaintiff appears to be raising two separate Fourteenth Amendment claims in his complaint. First, plaintiff alleges that defendants Williams and Spisak filed "false charges" against him,

[2] Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

after a confrontation regarding plaintiff's identification badge. (D.I. 2 at 3) As a result of the "false charges," plaintiff alleges that he was placed in "the hole" for 15 days and then reclassified to the Security Housing Unit ("SHU"). (Id.)

Second, plaintiff appears to be alleging that the hearing officer, defendant Reynolds, violated his right to due process by incorrectly noting on the hearing decision that plaintiff did not wish to appeal. (Id.) Plaintiff alleges that although defendant Reynolds only found him guilty of one disciplinary violation, he told defendant Reynolds that he wanted to appeal the decision. Plaintiff also alleges that he completed an appeal form, which he filed "as directed". (Id.) Finally, plaintiff alleges that rather than receiving a response to his appeal, he received an order executing the sanction imposed which indicated that he did not wish to appeal. (Id.) Significantly, plaintiff has not provided the court with a copy of the order. Plaintiff requests that the court issue a declaratory judgment finding that each of the defendants has violated his constitutional rights. Plaintiff also requests that the court issue an injunction, ordering the defendants to reclassify him.

B. Procedural History

On January 7 and 8, 2002, plaintiff, citing his inability to pay the fee, filed two letter motions requesting a refund of the initial partial filing fee. (D.I. 6 and 7) On January 17, 2002,

plaintiff filed another letter motion, again requesting a refund of the money he paid toward the filing fee. (D.I. 8) On January 18, 2002, plaintiff filed a letter motion stating that he wished to withdraw his complaint and again requested a refund. (D.I. 9) However, on January 28, 2002, plaintiff filed a motion for appointment of counsel. (D.I. 10) Then, on February 6, 2002, plaintiff filed a letter motion requesting that his case proceed as filed. (D.I. 11)

To the extent that plaintiff still wishes to receive a refund of the money he has paid toward the filing fee, his motions shall be denied pursuant to 28 U.S.C. § 1915(b). See also Goins v. Decaro, 241 F.3d 260 (2d Cir. 2001)(prisoner withdrawing appeal is not entitled to refund of partial payments). Furthermore, plaintiff's motion to withdraw the complaint shall be denied as moot. Finally, because the court finds the complaint to be frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), plaintiff's motion for appointment of counsel shall also be denied as moot.

C. Analysis

1. Plaintiff's Due Process Claims

Plaintiff alleges that defendants Williams and Spisak filed false disciplinary charges against him in violation of his Fourteenth Amendment right to due process. Plaintiff also alleges that defendant Reynolds violated his Fourteenth Amendment

right to due process by failing to document plaintiff's intention to appeal the outcome of his disciplinary hearing. As a result, plaintiff alleges that he was forced to serve 15 days in segregation and was subsequently reclassified to the SHU. Analysis of plaintiff's due process claims begins with determining whether a constitutionally protected liberty interest exists. See Sandin v. Connor, 515 U.S. 472 (1995); Hewitt v. Helms, 459 U.S. 460 (1983).

"Liberty interests protected by the Fourteenth Amendment may arise from two sources -- the Due Process Clause itself and the laws of the States." Hewitt v. Helms, 459 U.S. at 466. The Supreme Court has explained that liberty interests protected by the Due Process Clause are limited to "freedom from restraint" which imposes an "atypical and significant hardship in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. at 483-84. Segregation for a period of 15 days and reclassification to a higher security level "falls within the expected parameters of the sentence imposed by a court of law." Id. at 485. Moreover, the type of sanction plaintiff received "by itself, is not sufficient to create a liberty interest, and [plaintiff] does not claim that another constitutional right (such as access to the courts) was violated." Smith v. Mensinger, 293 F.3d 641, 653 (3d Cir. 2002). Therefore, the court concludes that plaintiff's segregation and subsequent

reclassification were "within the normal limits or range of custody [his] conviction authorizes the State to impose." Meachum v. Fano, 427 U.S. 215, 225 (1976).

Furthermore, this Court has repeatedly determined that the Department of Correction statutes and regulations do not provide prisoners with liberty or property interests protected by the Due Process Clause. See Carrigan v. State of Delaware, 957 F.Supp. 1376 (D. Del. 1997); Abdul-Akbar v. Dept. of Correction, 910 F.Supp. 986 (D. Del. 1995); Jackson v. Brewington-Carr, No. 97-270, 1999 U.S. Dist. LEXIS 535 (D. Del. Jan. 15, 1999). Consequently, plaintiff's claims that defendants Williams, Spisak and Reynolds have violated his right to due process have no arguable basis in law or in fact. Therefore, plaintiff's Fourteenth Amendment due process claims against defendants Williams, Spisak and Reynolds shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2. Vicarious Liability

Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory. See Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). In order for a supervisory public official to be held liable for a subordinate's constitutional tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to

the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Canton v. Harris, 489 U.S. 378, 389 (1989). Here, plaintiff does not raise any specific allegations regarding defendant Snyder. It appears that plaintiff has named defendant Snyder as a party to this action simply because of his supervisory position. (D.I. 2 at 2)

Nothing in the complaint indicates that defendant Snyder was the "driving force [behind]" any of the defendants's actions, or that he was even aware of plaintiff's allegations and remained "deliberately indifferent" to his plight. Sample v. Diecks, 885 F.2d at 1118. Consequently, plaintiff's claim against defendant Snyder has no arguable basis in law or in fact. Therefore, plaintiff's claim against defendant Snyder is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, IT IS HEREBY ORDERED this 27th day of September 2002, that:

1. Plaintiff's letter motions requesting a refund (D.I. 6, 7, 8 and 9) are DENIED pursuant to 28 U.S.C. § 1915(b).

2. Plaintiff's motion to withdraw the complaint (D.I. 9) is DENIED as moot.

3. Plaintiff's motion for appointment of counsel (D.I. 10) is DENIED as moot.

4. Plaintiff's Fourteenth Amendment claims are dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

5. Plaintiff's vicarious liability claim is dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

6. The clerk shall mail a copy of the court's memorandum and order to the plaintiff.

Sue L. Robinson
United States District Judge